



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1995

Mr. Herbert L. Prouty
General Counsel
El Paso Water Utilities Public Service Board
P.O. Box 511
El Paso, Texas 79961-0001

OR95-264

Dear Mr. Prouty:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32114.

The El Paso Water Utilities Public Service Board (the "board") received two requests for information. The first requestor seeks copies of all documents related to the proposed new water rate structure for very large users. The second requestor seeks "a copy of the rate studies commissioned by the [board] as a basis for the proposed action to amend Rule No. 5," a rule you say governs the water rates for the city of El Paso. You seek to withhold from required public disclosure portions of the requested information based on sections 552.107(1) and 552.111 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* In addition, section 552.111 may apply to information created for a governmental body by an outside consultant when the outside consultant is acting at the request of the governmental body and performing a task within the authority of the governmental body. *See* Open Records Decision No. 631 (1995).

Portions of the requested information were prepared by the Raftelis Environmental Consulting Group ("Raftelis"). You inform us that the board hired Raftelis under a professional services contract to provide analyses and recommendations regarding the new very large water users rate, the establishment of a special local government turf only irrigation account rate, and a new reclaimed water rate. We believe Raftelis was acting at the request of the board and was performing a task within the authority of the board. Consequently, we agree that section 552.111 applies to portions of the requested information, including information prepared by Raftelis. *See id.* We have marked those portions that the board may withhold pursuant to section 552.111.

Having concluded that section 552.111 applies to the information for which you raised section 552.107(1), we need not address your section 552.107(1) claim.¹ We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 32114

Enclosures: Marked documents

cc: Ms. Carmen A. Leal
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El Paso, Texas 79901
(w/o enclosures)

¹Section 552.107(1) applies to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990).

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